

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

KENNETH GRIFFIN,

Petitioner,

v.

ACTION NO. 2:13-cv-452

HAROLD W. CLARKE, Director,
Virginia Department of Corrections,

Respondent.

FINAL ORDER

Before the Court is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, and the Respondent's motion to dismiss the petition. In his petition, the pro se Petitioner challenges the constitutionality of his 2008 judgment of conviction and sentence in the Circuit Court for the City of Portsmouth after a three-day jury trial for first-degree murder, aggravated malicious wounding, and two counts of using a firearm in the commission of a felony. The trial court imposed the sentence recommended by the jury: life imprisonment for the first-degree murder conviction, twenty years of imprisonment for the aggravated malicious wounding conviction, and five years of imprisonment for each firearm charge, for a cumulative sentence of life imprisonment plus thirty years.

The petition was referred to a United States Magistrate Judge for Report and Recommendation pursuant to the provisions

of 28 U.S.C. §§ 636(b)(1)(B)-(C), and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation entered on April 15, 2014 recommends granting the Respondent's motion to dismiss and dismissal of the Petition with prejudice. The parties were advised of their right to file written objections to the Report and Recommendation. On April 29, 2014, the Court received the Petitioner's objections. ECF No. 10. The Respondent has not filed his own objections, nor has he responded to the Petitioner's objections, and the time to do so has expired.

Pursuant to Federal Rule of Civil Procedure 72(b)(3), the undersigned reviewed de novo the Magistrate Judge's Report and Recommendation, and the Petitioner's objections thereto. After review, the Court fully accepts the findings and recommendations of the Magistrate Judge, and accordingly, the Court does hereby **ADOPT** and **APPROVE** the Report and Recommendation filed April 15, 2014, ECF No. 9, as the Court's own opinion. The Petitioner's objections, ECF No. 10, are **OVERRULED** in full. Therefore, the Respondent's motion to dismiss, ECF No. 4, is **GRANTED**, and the petition, ECF No. 1, is **DENIED** and **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that judgment be entered in favor of the Respondent.

The Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

The Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right, and therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See 28 U.S.C. § 2253(c)(3); see also Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to the Petitioner and to counsel of record for the Respondent.

It is so ORDERED.



Arenda L. Wright Allen
United States District Judge

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

Date: 6.2.14